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# Letter Ruling 99-14: Manufacturing Exemption; Wood Waste Reclamation Facility

September 3, 1999

You request a letter ruling on behalf of \*\*\*\*\* ("Company") regarding eligibility for an exemption from paying sales tax under G.L. c. 64H, § 6(r) and (s) when purchasing materials or fuel which will be consumed, and machinery (including replacement parts) to be used, directly and exclusively in the production of tangible personal property to be sold.

## I. FACTS

Company is a wood waste reclamation facility (disposal site for stumps, brush, leaves and grass) as defined and site assigned by the Commonwealth of Massachusetts, Department of Environmental Protection. The facility consists of approximately 20 acres. All activities are performed outdoors. Due to the nature of the materials, they require being exposed to sunlight and rain in order to enhance the natural composting process. The only activity performed indoors is at the site trailer office where the sales transactions take place. There are two small storage trailers on site that hold tools and parts. Tools are also stored in the rear of the site trailer office.

Based on estimated tonnage, 65% of the wood waste accepted at the facility is deposited for composting, which yields the end products of screened loam and compost. When deposited, heavy equipment such as rubber tire wheel loaders and bulldozers are used to push and work the waste into the appropriate area for long term composting. When the wood waste is naturally broken down (approximately 5 – 7 years) the equipment is used to reclaim the soil and dig it out. The soil is then screened and mixed using screeners and other equipment, yielding screened loam. Leaves are processed in a manner similar to the loam. They are then mixed with the screened loam to form compost. The remaining 35% of wood waste is ground by a large tub grinding machine. Once ground, it is stockpiled and turned regularly by the loaders until its color and consistency make it ready for sale. The end products of this process are processed wood chips and processed mulch.

The machinery (tub grinders, loaders, bulldozers and screeners) is used directly and exclusively in the processing and production of products to be sold (screened loam, compost, processed wood chips and processed mulch) by means of grinding, turning, mixing, pushing, reclaiming and screening. In addition to the uses mentioned above, the loaders are used to load Company's trucks with reclaimed material that has not fully decomposed, which is redeposited within the facility for further composting. The loaders are also used a small percentage of the time to load Company's trucks with materials to be delivered to customers and/or to load customer's trucks or trailers with materials on site. Company owns some of this equipment. Another corporation owns the rest, and allows Company to use its equipment under contract.

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In addition, Company purchases materials such as bark mulches, wood chips, fill, and sand from outside vendors. Some of these materials are resold in the same condition to customers and others are mixed with materials produced by Company for sale to customers. Breaking down all materials sold by cubic yards, 55% are produced by Company, and the remaining 45% are purchased from outside vendors for resale to customers.

## II. RULING

For reasons discussed below, we rule that Company's facility qualifies as an "industrial plant" under G.L. c. 64H, § 6(r) and (s). Therefore, following the provisions of those sections, materials and fuel consumed and machinery, and replacement parts, purchased by Company to be used directly and exclusively in the actual manufacture of tangible personal property to be sold will be exempt from sales tax. For purposes of this ruling, the screened loam, compost, processed wood chips and processed mulch manufactured at the facility, as well as products that are a combination of these materials and materials purchased from outside vendors, are considered manufactured tangible personal property to be sold. Material purchased from outside vendors and resold to customers without change is not manufactured by Company and would be outside the scope of the exemptions. If any machinery used in the manufacturing process for which Company is seeking an exemption is also used for materials purchased from outside vendors for resale without change, that machinery is not being used "exclusively" in the manufacturing process and will not be eligible for the exemption. Based upon the facts as presented, this facility appears to be "primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold."

## III. DISCUSSION

Massachusetts law imposes a sales tax on the retail sale of tangible personal property. See G. L. c. 64H, § 2. A "retail sale" is a sale of tangible personal property for any purpose other than for resale in the ordinary course of business. G.L. c. 64H, § 1. General Laws Chapter 64H, § 6(r), (s), in relevant part, exempts from sales tax:

Section 6 (r). sales of materials, tools and fuel, or any substitute thereof, which become an ingredient or component part of tangible personal property to be sold or which are consumed and used directly and exclusively ... in an industrial plant in the actual manufacture of tangible personal property to be sold....[T]he term "industrial plant" shall mean a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business.

Section 6(s). sales of machinery, or replacement parts thereof, used directly and exclusively ... in an industrial plant in the actual manufacture of tangible personal property to be sold ....[T]he term "industrial plant" shall mean a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business.

### Industrial Plant

The critical issue relating to the facts presented is whether Company's facility is an "industrial plant" within the meaning of the statute. Company's facility does not fit within the common perception of a factory with its billowing smokestacks. In fact, there are no buildings on the property that have a direct relationship to the manufacturing process. However, this facility does fit within the broad definition of a "factory" that was intended by the statute. It is a facility at a fixed location where machinery is used to effect a change on raw materials that produces a new end product for sale. In this case, the nature of the materials and the manufacturing process require that the manufacturing operation takes place outdoors. This fact does not preclude this facility from being considered an industrial plant.

In 1971, the legislature amended G.L. c. 64H, § 6(r) and (s) to include the definition of an industrial plant mentioned above. 1971 Mass. Acts 555, § 45. "The legislature added this definition to the statute ... in response to the Supreme Judicial Court's decision in Wakefield Ready-Mixed Concrete Co., Inc., 356 Mass. 8 (1969), which interpreted an 'industrial plant' as including cement trucks even though mobile." Denis Corporation v. Commissioner of Revenue, 34 Mass. App. Ct. 909 (1993).

In determining whether a facility is an industrial plant, it is essential that the manufacturing process takes place at a fixed and well-defined location. In Denis Corporation v. Commissioner of Revenue, A.T.B. No. 178161 (1991), affirmed 34 Mass. App. Ct. 909 (1993) the Board found that a portable stone-crushing machine should not be considered an industrial plant because of its mobile character. "When performing contract work, Denis ... travels to remote sites with its generators, front-end loaders, and portable rock crushing plants; completes the required processing; stockpiles the finished products at the site; and then removes its equipment." A.T.B. Denis at 3. The Board noted that Denis performed these services on client land, and the jobs were normally completed within two to three weeks. The decision does, however, go on to state that physical buildings are required, citing the dictionary definition of a "factory" as "a building or group of buildings in which goods are manufactured." The American Heritage Dictionary 485, (4<sup>th</sup> Ed. 1968).<sup>[1]</sup>

Although the Board in Denis determined that a "factory" required a physical building, the predominant point of the decision, including the Board's reference to the genesis of the statutory amendment in the Wakefield case, is that the manufacturing must take place at a fixed and permanent location. In contrast to Denis, in this instance, the manufacturing is taking place entirely at Company's own facility. Although trucks and other heavy mobile equipment are machines and tools used in the manufacturing operation, they are used exclusively at the facility. These pieces of equipment are not "mobile" in that they are not transient and do not move from location to location to perform their work. It should be noted, however, that if this equipment is ever used outside the grounds of Company's facility, such mobile character could very well remove that equipment's eligibility for the exemptions, not to mention that such use would also most likely remove that equipment's "exclusive" use in the manufacturing operation, also required for the exemptions.

#### Engaged in Manufacture

The facility is clearly "engaged in the manufacture, conversion or processing of tangible personal property to be sold." The SJC has defined manufacturing as "ordinarily and commonly denot[ing] the process of transforming raw or finished materials by hand or machinery, and through human skill and knowledge, into something possessing a new nature and name and adapted to a new use." See Commissioner of Corporations & Taxation v. Assessors of Boston, 321 Mass. 90, 94 (1947), quoted in, Westinghouse Broadcasting Co. v. Commissioner, 382 Mass. 354, 357 (1981). Here, the raw materials are turned into new products with the assistance of the machinery used at the facility. Based upon the facts as presented, this facility appears to be "primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold." <sup>[2]</sup> See Maxymillian Technologies, Inc. v. Commissioner of Revenue, A.T.B. No. F239614 (1999) (soil remediation was considered manufacturing).

Regarding the loaders, you indicate that they are used to load product sold into your trucks for delivery or into customer vehicles at your facility. This use is consistent with the requirements of the exemptions in that the loaders are used to "place such property in the container, package or wrapping in which such property is normally sold to the ultimate customer thereof." G.L. c. 64H, § 6(s). See Lawrence-Lynch Corporation v. Commissioner of Revenue, A.T.B. No. 195193 (1997) (loading of asphalt from batch silo into delivery truck was placing the manufactured product in the container in which such property is normally sold to the ultimate consumer).

#### IV. CONCLUSION

We rule that Company's facility qualifies as an industrial plant under G.L. c. 64H, § 6(r) and (s). Therefore, following the provisions of those sections, materials and fuel consumed, and machinery, or replacement parts thereof, purchased by Company to be used directly and exclusively in the actual manufacture of products to be sold will be exempt from sales and use tax.

Very truly yours,

/s/Frederick A. Laskey

Frederick A. Laskey  
Commissioner of Revenue

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- [1] In contrast, other definitions of a “factory” do not require the presence of buildings. For example, the Chambers Dictionary (1998) defines a factory as “a place or building where goods are manufactured.”
- [2] At any given time, the determination of whether Company is “primarily” engaged in manufacturing will be made based upon the facts and circumstances then in existence.